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Northern California Health and Welfare Trust Fund, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND; and its JOINT BOARD OF
TRUSTEES; ROBERT WILLIAMS and JOHN
MAGGIORE, Trustees;

BAY AREA PAINTERS AND TAPERS PENSION
TRUST FUND, and its JOINT BOARD OF
TRUSTEES; ROBERT WILLIAMS and SAL
MADRIGAL, Trustees;

DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA JOURNEYMAN AND
APPRENTICE TRAINING TRUST FUND, and its
JOINT BOARD OF TRUSTEES; ROBERT
WILLIAMS and JIM MAGGIORE, Trustees.

Plaintiffs,

v.

MASTERPIECE PAINTING, INC., a California
Corporation; and TERRANCE JOHNSON,
individually and doing business as MASTERPIECE
PAINTING,

Defendants.

Case No.:

COMPLAINT

Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area Painters and Tapers

1 Pension Trust Fund and Annuity Plan (together “Pension Funds”); and District Council 16 Northern
 2 California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”) are employee benefit
 3 plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C.
 4 § 1002(3). The Joint Board of Trustees (“Trustees”) of said Funds are the named fiduciaries of the Funds
 5 under ERISA § 302(a), 29 U.S.C. § 1002(a). Robert Williams and John Maggiore are Trustees, and
 6 fiduciaries, of the Health Fund. Robert Williams and Sal Madrigal are Trustees, and fiduciaries, of the
 7 Pension Fund. Robert Williams and Jim Maggiore are Trustees, and fiduciaries, of the Apprentice Fund.
 8 The Health Fund, Pension Funds, Apprentice Fund, and their respective Trustees and fiduciaries are
 9 collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

10 2. Masterpiece Painting, Inc., a California corporation, and Terrance Johnson, individually
 11 and doing business as Masterpiece Painting (collectively, “Defendants”), are an employer by virtue of
 12 ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

13 Jurisdiction

14 3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of
 15 ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and
 16 the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief
 17 to redress such violations, and seek all other appropriate relief under ERISA.

18 4. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management
 19 Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and
 20 conditions of a valid Bargaining Agreement.

21 5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
 22 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
 23 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
 24 herein, each of which has a substantial ground in federal jurisdiction.

25 Venue

26 6. Venue is conferred upon this Court by § 502, 29 U.S.C. § 1132. Where an action is
 27 brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’
 28 discretion, in the district where the plan is administered, where the breach took place, or where a

1 defendant resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at
 2 their principal place of business in Dublin, California. Thus, jurisdiction and venue are properly
 3 grounded with this Court.

4 7. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. §
 5 185, as this Court has jurisdiction over the parties, as the District Council No. 16 of the International
 6 Union of Painters and Allied Trades (the "Union") maintains its principal place of business in this
 7 district, its duly authorized officers or agents are engaged in representing employee members in this
 8 district, and the claims arise in this district.

9 Intradistrict Assignment

10 8. The basis for assignment of this action to this Court's Oakland Division is that all the
 11 events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA
 12 Plaintiffs' Funds and the Bargained Entities are administered, and where Defendants therefore failed to
 13 fulfill its statutory and contractual obligations to Plaintiffs.

14 Bargaining Agreement

15 9. Terrance Johnson, on behalf of "Masterpiece Painting" entered into the Northern
 16 California Painters Master Agreement ("Bargaining Agreement") between the Union and the Northern
 17 California Painting and Finishing Contractors Association, requiring employer contributions to
 18 Plaintiffs' ERISA Funds, to the Union for union dues, and to the other plans more fully described in the
 19 Bargaining Agreement. Plaintiffs are third party beneficiaries of the Bargaining Agreement. In addition,
 20 individual Defendant Terrance Johnson executed the Agreement of Employers Regarding Bay Area
 21 Painters and Tapers Trust Funds on behalf of Masterpiece Painting, Inc., which provides that the person
 22 signing on behalf of the employer is personally and individually liable for the Employer's contributions
 23 as required by the terms of the Bargaining Agreement. On the Agreement of Employers Regarding Bay
 24 Area Painters and Tapers Trust Funds, Terrance Johnson listed Contractor's License #: 56403.

25 10. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to
 26 collect monies due by Defendants to the following plans: the IUPAT Finishing Trades Institute, the
 27 IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Northern California
 28 Painting and Finishing Contractors Industry Fund, the Skills, Safety, Supervisor & Survival Training

Awards Recognition (STAR) Program, Inc., the Vacation/Holiday Fund, and the IUPAT Political Action Together-Political Committee (collectively referred to herein as the “Bargained Entities”). Plaintiffs’ Boards of Trustees have been authorized to collect and distribute monies due to the Bargained Entities as well as dues due to the Union under the Bargaining Agreement and Trust Agreements.

11. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs (the “Trust Agreements”), which are incorporated into the Bargaining Agreement and made binding on Defendants, Defendants are required to regularly pay to ERISA Plaintiffs, the Bargained Entities, and the Union, certain sums of money, the amounts of which are determined by the hours worked by Defendants employees. Contributions are due on the fifteenth (15th) day of the month following the month hours were worked and considered delinquent if not received by the last day of that month. Defendants are also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the Trustees from the day contributions become delinquent, which is the first (1st) day of the month following the month in which payment was due, until paid.

12. The Bargaining Agreement further requires Defendants to maintain time records or timecards, and to submit any and all relevant records to Plaintiffs for examination to determine whether Defendants are making full and prompt payment of all sums required to be paid by it to Plaintiffs. Should an audit of Defendants records reveal Defendants have failed to provide full and prompt payment of all sums due, Defendants must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

Factual Allegations

13. Defendants have failed to report and pay contributions for hours worked by their employees during the months of June 2021 through December 2021. Liquidated damages and interest are owed on the unreported and unpaid contributions for these months.

14. Defendants have also failed to pay fringe benefit contributions for hours worked by their employees during the month of May 2021. Liquidated damages and interest are owed on the unpaid

1 contributions. In addition, Defendants owe liquidated damages and interest on late-paid contributions for
2 the months May 2020, July 2020, and September 2020.

3 15. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated
4 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or
5 otherwise, including estimated contributions for any months Defendants failed to report to Plaintiffs,
6 through the time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there
7 are any additional amounts due from Defendants.

8 **FIRST CAUSE OF ACTION**
9 **For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and**
10 **Costs Against Defendants**

11 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

12 17. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs
13 and the Bargained Entities, and to timely pay dues to the Union, pursuant to the Bargaining Agreement
14 and Trust Agreements. Defendants also have a contractual duty under the Bargaining Agreement, and
15 Trust Agreements incorporated therein, to permit an audit of its records to determine whether it is
16 making full and prompt payment of all sums required to be paid by it to Plaintiffs, and to pay Plaintiffs
all amounts found due as a result of an audit, including audit fees.

17 18. In addition, Defendants have a statutory duty to timely make the required payments to
18 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

19 19. By failing to make the required payments to Plaintiffs, Defendants breached the
20 Bargaining Agreement and are in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

21 20. Defendants' failure and refusal to pay the required contributions was at all times, and still
22 is, willful. Defendants continues to breach the Bargaining Agreement, and incorporated Trust
23 Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with
24 knowledge and intent.

25 21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
26 irreparable injury, loss, and damage unless Defendants are ordered specifically to perform all obligations
27 required on Defendants parts to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29
28 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to

1 refuse to perform as required thereunder.

2 22. This Court is authorized to issue injunctive relief based on the traditional standard. As set
3 forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility
4 that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of
5 hardships and advancement of public interest favor ERISA Plaintiffs.

6 23. This Complaint does not in any manner relate to statutory withdrawal liability that may or
7 may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any such
8 withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust
9 Agreements, and the law.

10 Prayer

11 WHEREFORE, Plaintiffs pray as follows:

12 1. For a judgment against Defendants as follows:

13 (a) Any unpaid contributions, due at time of Judgment, including those specified
14 above as well as any other contributions determined as due by audit, timecards, or otherwise, including
15 estimated contributions for any months Defendants fails to report to Plaintiffs, pursuant to ERISA §
16 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

17 i. To ERISA Plaintiffs and the Bargained Entities, in accordance with
18 ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

19 ii. To the Union in accordance with the Bargaining Agreement.

20 (b) Liquidated damages on all late-paid and unpaid contributions in an amount
21 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA
22 § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

23 (c) Interest on all late-paid and unpaid contributions at the rates set in accordance
24 with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132
25 (g)(2)(B).

26 2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in
27 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
28 with the Bargaining Agreement for all Bargained Entities; and with LMRA § 301, 29 U.S.C. § 185, for

1 all Plaintiffs.

2 3. For an order,

3 (a) requiring that Defendants comply with its obligations to Plaintiffs under the terms
4 of the Bargaining Agreement and the Trust Agreements;

5 (b) enjoining Defendants from violating the terms of those documents and of ERISA;
6 and;

7 (c) enjoining Defendants from disposing of any assets until said terms have been
8 complied with, and from continuation or operating of Defendants business until said terms have been
9 complied with.

10 4. That the Court retain jurisdiction of this case pending compliance with its orders.

11 5. For such other and further relief as the Court may deem just and proper.

12 DATED: January 31, 2022

SALTZMAN & JOHNSON LAW CORPORATION

13 By: _____/S/

14 Matthew P. Minser
15 Attorneys for Plaintiffs, District Council 16 Northern
16 California Health and Welfare Trust Fund, et al.
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